

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

VICTOR ROJAS

Petitioner,

v.

UNITED STATES,

:
: Hon. Faith S. Hochberg
:
: Criminal No. 06-555 (FSH)
:
: **ORDER and OPINION**
:
: Date: April 30, 2008
:
:

HOCHBERG, District Judge:

This matter coming before the Court upon Petitioner's February 25, 2008 Motion for Return of Property pursuant to Federal Rule of Criminal Procedure 41(g) (DKT#30); and

it appearing that Petitioner Rojas seeks the return of a minivan seized by the United States at the time of his arrest; and

it appearing that Rule 41(g) states that "[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion." Fed. R. Crim. P. 41(g); and

it appearing that on July 24, 2007 Petitioner Rojas pleaded guilty to a one-count information charging him with conspiring to distribute and possessing with intent to distribute one kilogram or more of heroin; and

it appearing that the initial criminal complaint recites, and the government's opposition brief reiterates, that one of the three kilograms of heroin possessed by Petitioner Rojas was found in the minivan at issue in the instant motion; and

it appearing, in any event, that Petitioner Rojas has not alleged that he was aggrieved by an unlawful search and instead states only that the minivan “ha[s] no evidentiary value”; and

it appearing, therefore, that the minivan was properly seized in accordance with 21 U.S.C. § 853(a)(2), which states that “[a]ny person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law . . . any of the person’s property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation;” and

it appearing that Petitioner Rojas has failed to allege facts sufficient to warrant the return of the minivan pursuant to Rule 41(g).

ACCORDINGLY IT IS on this 30th day of April 2008,

ORDERED that Petitioner Rojas’s Motion for the Return of Property (DKT#30) is **DENIED**.

/s/ Faith S. Hochberg

Hon. Faith S. Hochberg, U.S.D.J.